IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Chamber Summons No. 246 of 2007
in
Suit No.207 of 1987

1(a) Vasumati Khubchand Doshi
and others ..Plaintiffs

vs.

1. Damji Odhavji Mistry
and others ..Defendants

and

1.(a) Manoj Dhanji Mistry
and others ..Respondents

Mr.P.R.Gyani for plaintiffs.
Mr.K.A.Sampati for defendant nos.2(a) and 2(b)
Ms.Deshapnde i/b Mr.H.Mehta for defendants.

CORAM: S.C.DHARMADHIKARI J.
6th July, 2007

P.C.

1. This chamber summons seeks to bring on record the heirs and legal representatives of deceased defendant nos. 8 and 9 and for deleting the name of defendant no.1.

2. In the affidavit in support of this chamber summons, it is pointed out that the written statements were not filed as the suit also did not appear on board for considerable period of time. When it appeared on board on 30th June, 2006 and directions were given on 7th July, 2006 i.e. on the next date the Advocate appearing for deceased defendant nos.8 and 9 pointed out to Court that

the defendant nos. 8 and 9 had expired. In such circumstances, the earlier chamber summons which was filed was withdrawn with liberty to take out the fresh chamber summons after the details of heirs and legal representatives were obtained. Such details were furnished in January, 2007 and thus there is no delay. Mr.Gyani submits that liberal principles have to be applied while deciding such application and an opportunity be given to the plaintiffs to have adjudication on merits of the claim against the deceased defendants as right to sue survives.

3. On the other hand, Mr.Sampat pointed out that the death has occured as far back as in 1991 and 1997 and no steps having been taken for all these years there is no warrant to restore the suit to file against these defendants by impleading their heirs and legal representatives.

4. After having gone through the respective affidavits, in my view, considering the principles which have to be applied to such applications and the settled principle that the party should be given an opportunity to have adjudication on the merits as far as possible if it is not careless or negligent or lacking any bonafides, the present chamber summons deserves to be granted. However, for balancing the equities appropriate costs will have

also to be imposed.

5. Chamber Summons no.246 of 2007 is, therefore, made absolute in terms of prayer clauses (a), (c), (d) and (e). However, the plaintiffs should pay the costs quantified at Rs.2000/- to the Maharashtra State Legal Services Authority and proof of such payment being produced within a period of two weeks from today, the plaint shall be allowed to be amended within a period of two weeks thereafter. The copy of amended plaint be served on the defendants' advocate and Mr. K.A.Sampat who undertakes to file his vakalatnama for defendant nos.2(a) and 2(b). The other defendants be served in accordance with rules. Upon service of the amended plaint parties to file their respective written statements/additional written statement within 8 weeks from the date of receipt of amended copy of the plaint. Chamber summons is made absolute in the above terms.

(S.C.DHARMADHIKARI J.)